

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**DESERT ORCHID PARTNERS, L.L.C.,  
individually and on behalf of all others  
similarly situated,**

**Plaintiff,**

**V.**

**TRANSACTION SYSTEMS ARCHITECTS,  
INC., WILLIAM E. FISHER, GREGORY J.  
DUMAN, DWIGHT G. HANSON, DAVID C.  
RUSSELL and EDARD FUXA,**

**Defendants.**

**NANCY ROSEN, individually and on behalf  
Of herself and all others similarly situated,**

**Plaintiff,**

**V.**

**TRANSACTION SYSTEMS ARCHITECTS,  
INC., WILLIAM E. FISHER, GREGORY J.  
DUMAN, DWIGHT G. HANSON, DAVID C.  
RUSSELL and EDWARD FUXA,**

## Defendants.

**8:02CV553**

## ORDER

**8:02CV561**

This matter comes before the court on the plaintiffs' Motion to Compel Production of Unredacted August 6, 2002 Audit Committee Minutes (Filing No. 186 in case 8:02CV553; Filing No. 229 in case 8:02CV561) and the parties' Joint Motion for Further Extension of Time to Complete Discovery (Filing No. 269 in case 8:02CV553; Filing No. 311 in case 8:02CV561). The plaintiffs' motion to compel will be held in abeyance pending submission of the subject minutes for *in camera* inspection, which was proposed by the plaintiffs and agreed to by the defendants.

In the joint motion, the parties seek a third extension of time to complete fact discovery from May 31, 2006, until September 29, 2006. The parties state they have been conducting discovery and have taken many depositions, with additional depositions

scheduled between now and the May 31 deadline. However, the parties are having some difficulty scheduling non-party witnesses within that time period and several depositions were either unexpectedly canceled or necessarily postponed. The court finds the moving parties have shown good cause for an additional extension of time, however the parties fail to show good cause for such a lengthy extension of time. **See** Fed. R. Civ. P. 16(b); **Bradford v. DANA Corp.**, 249 F.3d 807, 809-10 (8th Cir. 2001); **see also Thorn v. Blue Cross & Blue Shield of Fla., Inc.**, 192 F.R.D. 308, 309 (M.D. Fla. 2000) (“In demonstrating good cause, the moving party must establish that the ‘scheduling deadlines cannot be met despite a party’s diligent efforts.’”) (**paraphrasing** Fed. R. Civ. P. 16 advisory committee notes (1983 amendment)). The parties state they have eight additional depositions to complete. Although the witnesses are of non-parties and one overseas witness, the parties have had ample opportunity to plan for such depositions and do not claim any of these witnesses was a surprise. The initial fact discovery deadline was November 4, 2005, which was extended to February 3, 2006, then to May 31, 2006, at the request of the parties. Accordingly, aside from the depositions which had to be unexpectedly rescheduled due to a medical emergency or otherwise, the parties have not demonstrated good cause or that the deadlines could not be met despite diligent efforts. However, the court will grant a brief extension of time to complete fact discovery. No further extensions of the deadline will be granted except on a showing that after an exercise of due diligence by the parties a manifest injustice would occur if a requested extension were not granted. Similarly, any further extension will apply only to specific witnesses or particular discovery and will not operate to continue expert witness discovery deadlines without a sufficient showing by the parties. Upon consideration,

#### **IT IS ORDERED:**

1. The plaintiffs’ Motion to Compel Production of Unredacted August 6, 2002 Audit Committee Minutes (Filing No. 186 in case 8:02CV553; Filing No. 229 in case 8:02CV561) is held in abeyance pending submission of the unredacted August 6, 2002 audit committee minutes for *in camera* inspection. The defendants shall have to **on or before May 10, 2006**, to submit a copy of the subject minutes under seal to chambers for

the undersigned magistrate judge. Absent compliance with this order, the plaintiffs' motion will be granted.

2. The parties' Joint Motion for Further Extension of Time to Complete Discovery (Filing No. 269 in case 8:02CV553; Filing No. 311 in case 8:02CV561) is granted as set forth below.

3. Fact discovery shall be conducted and be completed by **August 11, 2006**. All other deadlines in the January 17, 2006 Amended Order Setting Schedule for Progression of Case shall remain unchanged.

DATED this 1st day of May, 2006.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge